

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3599 of 2007()

**(C.C.NO.163/2006 ON THE FILE OF THE JUDICIAL FIRST CLASS
MAGISTRATE, CHITTUR)**

PETITIONER: ACCUSED:

**SHAIK MUSTHAF,
S/O.SHAHUL HAMEED ROWTHER, AGED 50 YEARS,
ATTAYAMPATHY, MUTHALAMADA AMSOM & DESOM,
CHITTUR TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS:

- 1. BALASUBRAMANIAN, S/O.NANJAPPA GOUNDER,
ATTAYAMPATHY, MUTHALAMADA AMSOM & DESOM,
CHITTUR TALUK, PALAKKAD DISTRICT.**
- 2. V.CHELLAPANDIAN, S/O.VELLASWAMY,
PLOT NO.13, SASTHRI NAGAR, IST STREET,
DINDIGUL DISTRICT, TAMIL NADU.**
- 3. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06/12/2007 ALONG WITH CRL.M.C.NO.2793 OF 2007, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

KSS

R. BASANT, J.

.....
Crl.M.C. Nos. 2793 D and 3599 F OF 2007
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Dated this the 6th day of December, 2007

O R D E R

These two petitions are integrally connected to each other. Both these petitions are for quashing prosecutions initiated against the petitioners herein.

2. One Chellapandian of Dindigul got a cheque issued to him allegedly by one Balasubramanian - the petitioner in Crl.M.C.2793/07. The said Chellapandian contended that the cheque was handed over to him by the said Balasubramanian. The cheque was dishonoured. He issued a notice under Section 138 of the Negotiable Instruments Act, 1881. Then, Balasubramanian contended that he does not know Chellapandian and he has not signed and handed over any cheque leaf to Chellapandian. Thereupon, the said Chellapandian filed a complaint before the Magistrate at Dindigul in Tamil Nadu. The same has been forwarded to the police under Section 156(3) Cr.P.C. Investigation is still pending, it is submitted.

3. On getting the notice from Chellapandian,

Balasubramanian came to know about the case of Chellapandian. He, therefore, filed a private complaint. He alleged that one Shaik Musthafa and Chellapandian had colluded together to forge the cheque with his signature thereon. His complaint was referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. A positive final report has already been filed alleging the commission of various offences by Chellapandian and Shaik Musthafa. The said proceedings are pending before the learned JFCM, Chittur as C.C.163/06. Shaik Musthafa has come to this Court now with CrI.M.C.3599/07 to quash the said proceedings against him.

4. Shaik Musthafa, in turn, filed a complaint raising the allegations against Balasubramanian. He alleged that the said Balasubramanian and he were carrying on some joint business. The said Balasubramanian had stolen a cheque leaf. He had misused the same in collusion with Chellapandian, and Chellapandian and Shaik Musthafa together are making use of the said stolen cheque to his prejudice. The complaint was referred to the police under Section 156(3) Cr.P.C.. The police, after

investigation, submitted a negative final report. Dissatisfied with that report, Shaik Musthafa filed a private complaint. Section 202 enquiry was conducted. Cognizance was taken. All the offences are allegedly committed by Balasubramanian. When case is pending as C.C.220/07 before JFCM, Chittur, Crl.M.C.2793/07 has been filed by the said Balasubramanian to quash the said proceedings.

5. I have heard the learned counsel for Balasubramanian and Shaik Musthafa in Crl.M.C. 2793/07 and 3599/07. Shaik Musthafa contends that no proper investigation has been conducted and the final report has been filed by the police without proper application of mind. He prays that the final report may be quashed.

6. The learned counsel for Balasubramanian - the petitioner in Crl.M.C.2793/07, contends that no proper Section 202 enquiry has been conducted and that the failure/omission was conducted a proper 202 enquiry and worked out prejudice and loss to him. He prays that C.C.220/07 may be quashed.

7. I have heard the counsel in detail. I have perused the

records and documents produced along with the CrI.M.Cs. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to exercise under section 482 Cr.P.C. The powers under Section 482 Cr.P.C. are wide and sweeping. But still lies in identified appropriate case in which said powers can and ought to be invoked.

8. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in these cases which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected and relied on in these two cases. Suffice it to say that allegations do appear to me to be in the nature of allegations and counter allegations by the parties concerned. It is unnecessary and premature for this Court at this stage to express any opinion on merits on the acceptability of the contentions of either of the petitioners. The petitioner in CrI.M.C.3599/07, Shaik Musthafa, can certainly claim premature

termination of the proceedings by discharge under Section 239 Cr.P.C. Needless to say that the learned Magistrate must consider such plea for discharge and take appropriate decision.

8. So far the petitioner in CrI.M.C.2793/07 is concerned, he can take part in the pre-charge enquiry under Section 244 Cr.P.C. and claim discharge. If he thinks he is entitled for claim under section 245 Cr.P.C. and if he feels to entitle to do the same, he can discharge him under Section 245(2) Cr.P.C. also. Such prayer must be considered by the learned Magistrate on merits and appropriate orders shall be passed.

9. Thus, taking the view that the extraordinary inherent jurisdiction under Section 482 Cr.P.C. it deserves to be invoked in favour of the petitioners in either of these two cases.

10. These petitions are dismissed with the above observations.

(R.BASANT, JUDGE)

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